

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff/Counterclaim Defendant,

v.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,

Defendants/Counterclaim Plaintiffs.

CIVIL ACTION NO. 05-11614-WGY

**PLAINTIFF JOHN HANCOCK LIFE INSURANCE COMPANY'S
OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff John Hancock Life Insurance Company ("John Hancock" or "Hancock") hereby opposes the Cross-Motion of defendants Vestmont Limited Partnership, *et al.* (collectively, "Montgomery Partners"), for Partial Summary Judgment in this action.

As grounds for its opposition, John Hancock incorporates by reference the evidence and arguments set forth in John Hancock's Motion for Summary Judgment and supporting documentation, all of which was filed with this court on March 1, 2006. John Hancock further states that Condition 30(d) of the parties' Loan Commitment -- which expressly provides, *inter alia*, that Montgomery Partners shall pay "*all* damages, losses, costs and expenses suffered or

incurred by John Hancock” as a result Montgomery Partners’ failure to close the loan by the agreed-upon Closing Date of August 1, 2005 (emphasis added) -- is extremely broad and cannot reasonably be interpreted so as to limit John Hancock’s recovery to liquidated damages as a matter of law. To the contrary, John Hancock already has submitted credible evidence in the form of sworn testimony and financial calculations establishing that Hancock’s actual “damages, losses, costs and expenses” resulting from Montgomery Partners’ breach of the Loan Commitment (not including attorney’s fees) exceed \$4,700,000. *See, e.g.*, John Hancock’s Statement of Undisputed Facts In Support of Its Motion for Summary Judgment, dated March 1, 2006, ¶¶ 19-20; Supplemental Affidavit of Timothy J. Malik In Support of John Hancock Life Insurance Company’s Motion for Summary Judgment, dated February 28, 2006, ¶ 3, Exhibit A.

For the foregoing reasons, John Hancock respectfully submits that Montgomery Partners’ Cross-Motion for Partial Summary Judgment should be denied.

JOHN HANCOCK LIFE INSURANCE
COMPANY

By its attorneys,

/s/ Brian A. Davis

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Date: March 20, 2006

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 20, 2006.

/s/ Brian A. Davis

Brian A. Davis